

1 UNITED STATES DISTRICT COURT
 2 WESTERN DISTRICT OF WASHINGTON
 3 AT TACOMA

4 UNITED STATES OF AMERICA,)	Docket No. CR05-5828FDB
5 Plaintiff,)	Tacoma, Washington
6 vs.)	June 19, 2008
7 BRIANA WATERS,)	9:10 A.M.
8 Defendant.)	

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 11 TRANSCRIPT OF SENTENCING
 12 BEFORE THE HONORABLE FRANKLIN D. BURGESS
 SENIOR UNITED STATES DISTRICT COURT JUDGE.

13 APPEARANCES:

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24 Proceedings recorded by mechanical stenography, transcript
 25 produced by Reporter on computer.

1 (Defendant present.)

2 THE CLERK: This is in the matter of United States of
3 America versus Briana Waters, Cause No. CR05-5828FDB.

4 Counsel, please make your appearance for the record.

5 MR. BARTLETT: Good morning, Your Honor. Mark
6 Bartlett, Andrew Friedmann, and Ted Halla for the United
7 States.

8 MR. FOX: Good morning, Your Honor. Neil Fox, on
9 behalf of Ms. Waters, who is present.

10 THE COURT: I notice the absence of Mr. Bloom.

11 MR. FOX: Right.

12 THE COURT: I have received a letter from him saying
13 that he wouldn't be here, and that he wouldn't be here at the
14 request of Ms. Waters.

15 Do you agree with that, Ms. Waters? Do you want to
16 proceed in his absence?

17 THE DEFENDANT: Yes, please.

18 THE COURT: All right. And the matter is on for
19 sentencing this morning, and the Court has reviewed,
20 obviously, as you can see by the load I brought in, a lot of
21 documents involved in this case. It seems like there were
22 letters reaching in the area of past 250, that I recall -- a
23 few duplications in there -- saying nice things about Ms.
24 Waters, as well as speaking of things that it seemed like they
25 knew very much about her. I don't know how they got the

1 information, but they were all speaking on her behalf.

2 So I've had a chance to read those, and the other filings
3 in the matter, along with the presentence report prepared by
4 probation. I've had the benefit of that and the briefs of the
5 sentencing memorandum filed by both counsel in the matter to
6 assist the Court in making a decision here in passing a fair
7 sentence.

8 Now, have I not mentioned something that I should have had
9 the special benefit of in order to proceed here today?

10 MR. BARTLETT: No, Your Honor.

11 MR. FOX: No.

12 THE COURT: All right. And Mr. Fox, you've had the
13 benefit of the presentence report, to go through that with Ms.
14 Waters?

15 MR. FOX: Yes, Your Honor. As I indicated in our
16 memo, we had some objections that we brought to the Court's
17 attention.

18 THE COURT: All right. And the Court has read those
19 objections. I don't know if we need to amplify on those in
20 any way. Is there anything else to be said about that? Any
21 factual situation involved in the report other than as they
22 may go to calculations under the guidelines, anything along
23 that line?

24 MR. FOX: Well, Your Honor, we have some objections
25 factually which I will address in the course of my

1 presentation.

2 THE COURT: All right. But the presentence, you've
3 had a chance to go through that with Ms. Waters, so we're
4 ready for sentencing at this time?

5 MR. FOX: Yes.

6 THE COURT: I will hear from the government first.

7 MR. BARTLETT: Your Honor, I think the Court has had
8 a chance to read some of the written victim statements by
9 people who were impacted by this crime. One of the
10 individuals from the University of Washington has come down
11 today and asked whether or not she could be permitted to make
12 just a brief statement to the Court. It's Linda Chalker
13 Scott. I would ask her to come up and make a brief statement
14 to the Court.

15 THE COURT: Let me hear from counsel first on this
16 matter before I hear from any victims. I believe this person
17 testified in the course of the trial?

18 MR. BARTLETT: No, that was Sarah Reichard, Your
19 Honor.

20 THE COURT: Okay. All right, I will hear from any
21 victim at a later time, but right now I will hear from
22 counsel.

23 MR. BARTLETT: Your Honor, today we are here to
24 sentence Briana Waters. She's 32 years old. She was
25 convicted by a jury of her peers after committing one of the

1 most serious arsons to occur in the district in the last
2 quarter century.

3 The defendant's actions caused not only millions of
4 dollars in damages to one of the greatest public universities
5 in the world, the University of Washington, but it, as the
6 Court has heard both at trial and in the written submissions,
7 impacted many, many victims.

8 Ironically, defendant's actions -- self-described as a
9 noble protest to help mother earth -- actually had totally the
10 opposite effect. There was no genetic engineering being
11 conducted by Professor Toby Bradshaw. The fire did nothing
12 but destroy some of the rarest plants, some that are
13 irreplaceable. It destroyed hundreds of rare, irreplaceable
14 books. It destroyed and set back innumerable research
15 projects, all of which were aimed at helping the environment.

16 Despite the seriousness of her crime and the huge impact
17 this arson had on the community, she stands before this Court,
18 spectacularly unrepentant, self-indulgent and unreflective.
19 In fact, the defendant continues to use every possible means
20 to avoid accepting any responsibility for her actions,
21 choosing instead to blame everyone but herself for her current
22 predicament. Why? Because Ms. Waters has failed to ever
23 grasp one of the most fundamental lessons of being an adult:
24 actions have consequences, decisions carry repercussions.

25 This defendant chose to become best friends with Bill

1 Rodgers, a person who devoted his entire life to planning and
2 carrying out arsons and other violent attacks and perfecting
3 how to build incendiary bombs. This defendant chose to get
4 and purchase a cell phone and pay for that cell phone for Bill
5 Rodgers so he could remain anonymous as he carried out his
6 illegal acts.

7 This defendant chose to help arrange and find a location
8 at Evergreen State College so the coconspirators of the double
9 whammy could meet in safety and anonymity.

10 This defendant chose to manipulate her cousin and close
11 friend, Robert Corrina, so a safe car could be obtained for
12 this arson. This defendant chose to plan the arson so
13 carefully that she even stole Robert Corrina's cordless phone
14 on the night of the arson so police could not be inadvertently
15 notified of her absence.

16 The defendant chose not to cooperate with law enforcement
17 throughout this activity. Instead, continued to claim that
18 she was innocent.

19 The defendant chose Bob Bloom to represent her.

20 The defendant chose to engage in what could only be
21 described as total character assassination with regard to
22 anyone that might hold her accountable for her prior actions:
23 Jennifer Kolar, Lacey Philabaum, Special Agent Ted Halla,
24 Special Agent Tony Torres, AUSA Andrew Friedmann, even this
25 Court.

1 Defendant chose to get on the stand at trial and commit
2 perjury time and time again.

3 And finally, the defendant chose to continue this charade,
4 even after conviction, choosing to portray herself as a noble
5 idealist wrongly convicted by a corrupt judicial system, in
6 effect a martyr.

7 Now, on the day of reckoning when she is about to face the
8 consequences of her many decisions that she's made over the
9 past years, she comes before this Court and begs for herself,
10 for mercy. To save her, she wants you, Your Honor, to save
11 her from her choices. The sense of arrogance and entitlement
12 that underlies this request would almost be comical if the
13 situation weren't so serious.

14 What is the proper sentence for this defendant?
15 Supervising United States Probation Officer Kalen Thomas
16 prepared a draft presentence report. He looked at input from
17 both the United States and from the defendant. He talked the
18 matter over with senior members of the United States Probation
19 Department here in this district, and they finalized her
20 presentence report. After fully staffing and venting this
21 individual, the U.S. Probation Office for the Western District
22 of Washington has recommended that this defendant receive a
23 term of imprisonment of ten years.

24 The United States strongly joins that recommendation, that
25 this Court impose a sentence of no less than ten years

1 imprisonment on this defendant. It is the absolute lowest
2 sentence of imprisonment that will accomplish the goals set
3 forth by the Supreme Court in its Booker decision and codified
4 in Title 18, Section 3553.

5 What does the Court and the Code tell you? A sentence
6 must reflect, first, the seriousness of the offense; second,
7 it must promote respect for the law; third, it must provide a
8 just punishment for the specific crime; fourth, it must
9 provide adequate deterrence to future criminal conduct; and
10 finally, it must protect the public from further crimes from
11 this defendant.

12 In attempting to arrive at a sentence that "reflects the
13 seriousness of the offense and promotes respect for the law,"
14 obviously one of the most important factors that not only this
15 Court, but all federal courts, consider in arriving at a
16 sentence is the sentencing guidelines. After Booker, they are
17 not mandatory, but they are still critical factors for the
18 Court to consider. They provide every district court in the
19 United States an objective guidepost as to how other
20 defendants that have committed similar crimes should be
21 treated.

22 As calculated by both the United States Probation
23 Department and our office, the defendant's sentencing
24 guideline range is 360 to 480 months, 30 to 40 years of
25 imprisonment. That is the place, 30 to 40 years of

1 imprisonment, where this Court should start in analyzing what
2 is the proper sentence for this defendant.

3 The probation office and the government's joint
4 recommendation of a ten-year term of imprisonment is one third
5 from the bottom of that applicable sentencing guideline range.
6 By any measure, our ten-year recommendation is extremely
7 lenient.

8 I am not going to go into a detailed discussion of all the
9 sentencing guideline calculations; that has been hashed out in
10 detail in the written submissions, and I'm not going to waste
11 the Court's time in going through it. I do want to mention
12 one thing, however, in regard to the terrorism enhancement.

13 Judge Aiken, in Oregon, has considered all the arguments
14 raised by both the United States and by the defendant. In
15 ruling in Oregon in her very detailed memorandum, Judge Aiken
16 indicated and, in fact, decided that the defendants involved
17 in the Jefferson Poplar crime should in fact receive the
18 terrorism enhancement, and they did.

19 But the Court is well aware, the Jefferson Poplar crime,
20 if anything, might be argued less applicable in regard to
21 terrorism enhancement because that was a private farm. In
22 this case, the University of Washington arson involved a
23 public university, a government institution. It is clear that
24 Judge Aiken, and I urge the Court, this Court, also, should
25 apply the terrorism enhancement to individuals involved in the

1 Center for Urban Horticulture arson.

2 In addition to looking at the sentencing guidelines,
3 obviously this Court will also look at, as set forth in the
4 Booker decision and in 3553(a), what is a just punishment for
5 the crime. One of those factors will be how a similarly
6 situated defendant has been treated.

7 The most analogous defendant for this Court to consider is
8 Eric McDavid. On May 8th, a little over a month ago, in the
9 Eastern District of California, Judge Morrison England
10 sentenced Eric McDavid to a term of imprisonment of 19 years
11 and seven months. That sentence was based on Mr. McDavid's
12 participation in the conspiracy, in the Earth Liberation Front
13 conspiracy, to commit arson.

14 By almost any objective analysis, McDavid's crime was less
15 serious than this defendant's. It was a serious crime. It
16 was a conspiracy to destroy a number of government buildings
17 and institutions, but it was never completed. No bomb was
18 actually set, no building was actually destroyed.

19 And second, although Mr. McDavid chose to go to trial and
20 asked the government and demanded that the government prove
21 his guilt beyond a reasonable doubt, he did not get on the
22 stand and commit perjury.

23 That case and his actions in that case and the crime in
24 that case stand in stark contrast to Ms. Waters' situation,
25 where a building was destroyed, a multi-million dollar

1 building, in an urban setting, and she did get on the stand,
2 and she did commit perjury, time and time again. And there's
3 a price to pay for that action.

4 In addition to looking at Eric McDavid, the Court will
5 also, obviously, look at some of the codefendants in this
6 case. I would suggest to the Court that the most analogous
7 and applicable codefendants for this Court to consider are the
8 sentences imposed by Judge Aiken on Joyanna Zacher and Nathan
9 Block. In many ways they are the defendants that most closely
10 resemble this defendant. Both Block and Zacher were from
11 Olympia, both were friends of Bill Rodgers. Both were
12 involved in the double whammy, although in Zacher's and
13 Block's case they were involved in the Jefferson Poplar arson
14 as opposed to the University of Washington arson.

15 Unlike this defendant Zacher and Block pleaded guilty,
16 admitted their criminal conduct, and accepted responsibility
17 for their actions.

18 Unlike this defendant, Zacher and Block also met with law
19 enforcement, and although they refused to name other names,
20 they fully and in detail described their own criminal conduct.
21 They received sentences of 92 months from Judge Aiken.

22 In looking at the next criteria set forth in Booker and in
23 Title 18, fashioning a sentence that affords adequate
24 deterrence to future conduct, this Court must, of course, look
25 at the specific crime that was committed.

1 This arson was not burning a horse corral in a rural
2 setting, such as at Susanville. It did not destroy pole sheds
3 on a privately owned farm in rural Oregon, such as Jefferson
4 Poplar. This crime was different. This crime destroyed a
5 multi-million dollar facility in a densely populated urban
6 area. It destroyed a teaching and research facility at a
7 public institution. Firefighters were put in serious risk of
8 harm. There were hundreds of victims of this crime:
9 Individuals who were employed at the Center for Urban
10 Horticulture; the graduate students who were trying to finish
11 their masters and doctorates, who saw their academic careers
12 either delayed or in some cases totally ruined; the
13 undergraduate students who went to class at the specific
14 facility; and finally, the citizens of the State of Washington
15 are victims. It is the taxpayers in this state that had to
16 foot the 6.2 million dollar bill that was required to rebuild
17 this institution because of this defendant's actions.

18 It took from May 21st, 2001, the day of the arson, until
19 January of 2005, when the new center was opened, for the many
20 victims in this case to have their lives returned to some
21 semblance of normality.

22 The librarian of the center, Brian Thompson, wrote a
23 letter to the Court and he described how over a thousand books
24 were destroyed, irreplaceable books. He further described how
25 he personally spent the next years doing grunt work trying to

1 salvage books and articles as opposed to the work that he was
2 trained to do, the research work he was supposed to be doing.

3 Sarah Reichard, a professor at the school, also wrote to
4 the Court, and she summed it up better than anything I could
5 ever say: "The people who worked at the Center for Urban
6 Horticulture are without exception good people whose main
7 concern is doing something positive for the environment. This
8 violent act devastated us and from which we, as individuals,
9 will never fully recover. They took years away from us and
10 changed how we look at our fellow human beings."

11 Hopefully, after hearing from the victims at trial and
12 reading their statements to the Court, I will never have to
13 again endure the repeated statements made prior by this
14 defendant and her supporters that this was nothing but a
15 property crime, that no one was really hurt.

16 In addition to looking at specifics of the crime, I think
17 the Court has to consider the motive underlying this crime.
18 It's a crime of terrorism, and terrorism is different. The
19 defendant and her partners held a joint role. They were
20 attempting to intimidate and coerce the government and the
21 universities into adopting their extremist views. In this
22 instance, they wanted to force the government and universities
23 to stop all work on genetic engineering. I'm not speculating
24 on that. The Earth Liberation Front communiqué that was
25 issued after this arson said, described it in detail:

1 "As long as universities continue to pursue this reckless
2 science, they run the risk of severe losses. Our message
3 remains clear: We are determined to stop genetic engineering.
4 From the torching of Catherine I've's office at Michigan State
5 University, to the total incineration of GE seeds at the D &
6 PL warehouse in Visalia, California, the Earth Liberation
7 Front is growing and spreading. As the culture of domination
8 forces itself into our very genes, wild fires of outrage will
9 continue to blaze."

10 Terrorism is the antithesis of America. It is the polar
11 opposite of how democracy works in a free and open society.
12 Terrorists, instead, attempt to impose their elitist views
13 through the use of violence and intimidation.

14 It is the arrogance of a bitter minority trying to impose
15 their will and rationalizing it by saying the end justifies
16 the means. It makes their crimes more serious and more
17 dangerous. As a result, terrorists are treated more harshly
18 by the law, and they should be.

19 I'm not going to spend a great deal of time rebutting the
20 many arguments raised in defense sentencing memo. I will note
21 that the argument that this Court can avoid a mandatory
22 minimum five-year sentence, as described in the legal
23 argument, is about as helpful as their other 30 motions that
24 have been raised and denied by this Court.

25 There are some arguments, however, that demand response.

1 First and foremost is the assertion that appears at page 16 of
2 the defendant's sentencing memorandum. At that page they make
3 the following statement: "The conviction was the result of a
4 series of errors at trial and a climate of fear."

5 This defendant was convicted because the government put on
6 overwhelming evidence of her guilt. We introduced hundreds of
7 pieces of physical evidence. We put on compelling testimony
8 from witnesses that was corroborated by physical evidence.
9 Her guilt was proven beyond all doubt. That's why she's
10 convicted. Not because there was fear in this courtroom or in
11 this jury or that there were any errors. She was convicted
12 because she's guilty.

13 Jennifer Kolar identified this defendant in December of
14 2005 out of the blue. She was on no one's radar screen, and
15 there has never been even a hint of an explanation as to why
16 Jennifer Kolar would make up this defendant's participation.

17 Weeks later, Lacey Phillabaum, totally independent of
18 Jennifer Kolar, also identified this defendant's participation
19 and describes how she participated.

20 Totally independent, two people involved in the
21 conspiracy, neither of them talking to each other, both
22 identified the defendant.

23 Even more damning, during this very first interview, Lacey
24 Phillabaum tells us something no one had ever heard, that this
25 defendant not only helped arrange for meetings, provided a

1 safe house for where the incendiary bombs were made, but she
2 had her aunt get the car that was used to transport the people
3 to the arson. After almost a year of work, what do we find?
4 The physical evidence that shows that's exactly right.

5 And in addition, Robert Corrina, her cousin, her friend,
6 comes in and tells this Court not only did he get the car at
7 this defendant's request, but all the lies and deceit that she
8 did to try to hide her activity.

9 Phone records show how close Bill Rodgers and her were.
10 Not only did she buy his cell phone, but he talked to her more
11 than anybody else, according to the phone records. And what
12 is most especially aggravating, is not only is this the
13 evidence that we put on at trial that proved beyond all doubt
14 her guilt, but there was a lot of other evidence that was not
15 admissible at trial that also showed her guilt. I am just
16 going to give you one example.

17 One of the coconspirators in Oregon was Daniel McGowan.
18 Daniel McGowan was part of the group that said I'm going to
19 plead guilty, I'm going to accept responsibility for my crime,
20 and I will tell you what I did with regard to these actions,
21 but I'm not going to name names. That was his deal in Oregon
22 he cut.

23 I was at the debriefing for Daniel McGowan, and what does
24 he say? He describes in detail his actions, and eventually he
25 talks about his activity with regard to the double whammy. He

1 was one of the participants in the Jefferson Poplar arson. He
2 describes coming to Olympia. He says that one of the other
3 participants, one of the participants in the U.W. arson,
4 arranged for a clean room where the incendiary bombs were
5 made. And, in fact, I, Daniel McGowan, went to this room and
6 I made the incendiary bombs. And where was the room? It was
7 in a garage that was separate from the house where this was
8 arranged, and I and other people went back there and in this
9 clean room made the bombs.

10 The exact description of Lacey Phyllabaum's clean room
11 where this defendant lived. And they know this exists. And
12 yet they continue to come before this Court, even now, to
13 claim, oh, I'm innocent.

14 By falsely protesting her innocence and by continually
15 alleging gross government and judicial misconduct, defendant
16 fuels an environment where additional crimes, such as the
17 Street of Dream arsons that occurred during jury
18 deliberations, will continue.

19 Briefly addressing the defendant's main arguments.

20 She says that I really had a really small role in this
21 arson so I should have a reduction. Mitigating role in the
22 offense.

23 That just simply factually isn't accurate. With regard to
24 this specific arson, she actually had a much greater role than
25 either Lacey Phyllabaum or Jennifer Kolar.

1 Now, clearly, Kolar was involved in many more arsons and
2 involved a longer period of time. But with regard to
3 mitigating role in the offense, all we're looking at is this
4 arson, the Center for Urban Horticulture arson. Her
5 involvement was much more than either Philabaum or Kolar.

6 Second, defense says that she should be given a break
7 because of family circumstances. The defendant loves her
8 daughter. There's no argument with regard to that. She's
9 very devoted to her daughter. There's no argument with regard
10 to that. Is it some kind of an extraordinary and unique
11 relationship? Does Mr. Fox really think that this defendant
12 loves her daughter more than he loves his two daughters? More
13 than I love my two daughters? I doubt it.

14 Any sentencing of a mother of a young child is incredibly
15 hard and it involves a very, very severe imposition on that
16 daughter, but it's nothing unique and it's nothing
17 extraordinary.

18 Finally, defendant indicates that she has a lifetime of
19 good works the Court should consider. The defendant is a
20 person who enjoys playing and teaching the violin. By all
21 accounts, she's incredibly talented. She's given benefit
22 concerts in the Bay Area. She provides violin lessons.

23 She's not Mother Teresa. She's not out trying to cure
24 cancer. She's not even helping the homeless. What she is
25 doing is what thousands and hundreds and millions of people do

1 every year. They live in their community, they belong to the
2 PTA, they go to community meetings, and they try to raise
3 their kids. Extraordinary? It's ordinary.

4 Now, she has collected a large number of letters in
5 support. The problem with those letters is that they are
6 based on a lie. The lie is: I'm an innocent person who was
7 wrongly convicted, and for goodness sake, please write and
8 tell the Court and help me.

9 Victoria Canby's letter captures the common theme that
10 appears in many of the letters:

11 "Honorable Judge Franklin Burgess:

12 "My friend Briana Waters has been tried and convicted of
13 arson at the University of Washington. I and many others who
14 know Briana are certain of her innocence."

15 Jessica Bottomley's letter:

16 "I have known Briana Waters for 8 years now... I know from
17 the core of my being that she did not commit these crimes she
18 has been accused of... I humbly ask that you please take a
19 moment to listen to my heart, to listen to the many
20 outstanding citizens who are standing up to assure you that
21 you have the wrong person in prison for these crimes."

22 If all the letter writers knew the truth, that in fact
23 this defendant had committed the arson, that she not only
24 committed the arson but chose to get on the stand and lie
25 under oath and that she engaged in the most guttural attacks

1 against any witness who dared to try to help hold her
2 accountable, I would submit that the huge majority of these
3 letters wouldn't have been written.

4 The support is based on a house of cards that doesn't
5 stand even the most cursory examination.

6 There are two minor matters I want to bring up to the
7 Court before I conclude.

8 The first is the defendant has asked that you recommend
9 that the Bureau of Prisons assign her to FCI Dublin. In all
10 honesty, in 25 years, I don't ever remember even commenting on
11 a designation, but in this instance, my understanding is that
12 the Bureau of Prisons is trying to keep all defendants
13 separate involved in this conspiracy.

14 We brought Suzanne Savoie up from Dublin to testify at
15 this trial, and we are attempting to get her back here. It is
16 my understanding, if this defendant goes to Dublin, she will
17 be prevented, and I believe that the Bureau of Prisons should
18 hold out Ms. Savoie's initial claim to Dublin over this
19 defendant's. So all I'm asking is for the Court to say no,
20 make no recommendation with regard to prison placement.

21 Surprisingly, defendant also asks that she be released
22 pending appeal, and in the alternative, at least be allowed to
23 self-report. I say surprisingly because this issue has been
24 litigated. In fact, the first time that I am aware of in this
25 district, this issue has been litigated all the way up to the

1 Ninth Circuit. In fact, she hired Dennis Riordan, one of the
2 best criminal appellate attorneys on the west coast, to
3 represent her at the Ninth Circuit, and this is what the Ninth
4 Circuit held in looking at her request for release.

5 "The district court properly found appellant failed to
6 establish by clear and convincing evidence that she is not a
7 flight risk." The Ninth Circuit continued, saying, "The
8 district court also properly found that there are no
9 exceptional circumstances why appellant's detention pending
10 sentence would not be appropriate."

11 This issue has been decided. In effect, they're almost
12 asking this Court to overrule what the Ninth Circuit ruled at
13 their request.

14 I would ask the Court continue detention of this defendant
15 and readopt its findings set forth in its April 28th order.

16 You've heard this trial, and I want to wrap it up and not
17 take too much of the Court's time, but there are a couple of
18 final points I want to make.

19 The first is just a frank request. Don't punish us for
20 making a ten-year recommendation. There's been a part of me,
21 a big part of me, that was strongly tempted to recommend 20
22 years in this case. That's where the defendant clearly
23 thought we would be, given the Eric McDavid sentence, the
24 guideline sentence. I think that would have been a very
25 reasonable recommendation.

1 I've been appearing before this Court for over 25 years,
2 and I have always provided you with nothing but my frank and
3 honest recommendation, and I'm not going to change today. Ten
4 years is what we strongly believe this defendant should get.

5 It's human nature in a bitterly contested case for a court
6 to want to split the baby, and I would suggest that's why you
7 have the defense recommendation of 18 months. Does the
8 defense really think the five-year mandatory doesn't apply?
9 Of course not. But they wanted to get under five years
10 because they think, it's kind of like a defense, we have to be
11 low so when they come in high we will get somewhere in the
12 middle.

13 I'm not doing that. I know this Court will independently
14 and carefully think about the appropriate sentence. Don't
15 play the game defense is asking you to play.

16 Second, the defense in all of its statements really talks
17 nothing except about specific deterrence for this crime, that
18 this defendant will never commit another crime and you can
19 trust that. But the Court, of course, has to not think just
20 about specific deterrence for Briana Waters, but you must
21 think about a general deterrence for the public at large. And
22 in this case, not only just general deterrence for other
23 individuals that might be considering arson, but other
24 individuals involved in the Earth Liberation Front and in the
25 Animal Liberation Front.

1 At some point in time -- maybe not next week, maybe even
2 not next month -- but at some point in time we will make
3 arrests in the Woodinville arson investigation, and at that
4 point, that individual or individuals will have to make a very
5 difficult choice: whether to cooperate with the United States
6 or not cooperate. And it's very difficult for Animal
7 Liberation Front or Earth Liberation Front members to
8 cooperate. Why? Because within that group, the most hated
9 and vilified label anyone could ever get is that of being a
10 snitch.

11 And it makes sense. Why does the ALF and ELF attack
12 cooperators so unmercifully? Because no one will join their
13 groups if they have the fear in the back of their mind that if
14 we're caught, my coconspirators will turn on me. That's why,
15 you heard the description, how they all get together before
16 any of these crimes and they join hands and they all
17 individually pledge, if caught, we're not going to cooperate.
18 And that is why anyone who does cooperate is absolutely
19 crucified within the community. Go online and look at the
20 blogs of how Lacey Phillips and Jennifer Kolar are being
21 described over the last couple of months.

22 If this defendant, however, is shown leniency by this
23 Court after her failure to cooperate, after her perjurious
24 testimony during the trial, and after her scorched earth
25 tactics and posttrial claims of innocence, no one from the ELF

1 or ALF will ever cooperate again. They simply won't. The
2 price will be too high personally.

3 The Court should also not only think about general
4 deterrence, but how this sentence will be viewed by the
5 victims and the public in general. The people, the many
6 people at the University of Washington, at Oregon State where
7 other people were involved in popular analysis, all of the
8 various victims in this case will be watching this sentence,
9 and a strong message needs to be sent so that they have faith
10 in our system.

11 Finally, I'm asking the Court to consider a personal
12 aspect of it. This defendant has proven time and time and
13 time again, she is totally incapable of accepting
14 responsibility for any of her actions. Think about it. In
15 the fall of 1998 she invites Craig Rosebraugh to come up to
16 Evergreen and give a speech, and after that speech she's
17 interviewed by Robert Sullivan, and he asked her whether she
18 supported arsons and mink farm releases. And she's quoted as
19 saying, "As long as people don't get hurt, I totally support
20 it." Not I support it; I totally support it.

21 And her friend, Tiffany Tudder, comes into this Court and
22 tells you, "Yeah, I was there at the conversation that
23 occurred." She can't accept responsibility for that
24 statement. Not only does she deny making the statement, but
25 she says that is exactly the opposite of what I thought.

1 Second. In 2001, she personally provides a collection of
2 articles to Jennifer Kolar, her then good friend. She writes
3 on the top of that, "Here are some articles to read. Let's
4 talk about it later."

5 Her fingerprints are on the outside; her boyfriend's
6 fingerprints are on the inside. The articles are all
7 extremely radical writings, anarchist writings about how to
8 destroy our current economic system.

9 When shown these articles, her response during this trial,
10 "I don't remember having read any of those articles or those
11 words; I disagree with them." Yet when we search Bill
12 Rodgers' house and Justin Solondz's house, what do we find?
13 These exact articles. The two people that she was most
14 closest to during this time frame, all are reading this. Of
15 course she's reading these things and thinks they are
16 important. But when she gets here to court, she cannot accept
17 responsibility.

18 Her own cousin gets on the stand and testifies. A friend
19 of hers. Can she accept responsibility for Mr. Corrina's
20 testimony? No. She basically destroys her own family to try
21 to protect herself. Mr. Corrina's mom flew out here to
22 provide him a little support while he testified. She wanted
23 to sit here and give him one friendly face in the stand while
24 he had to get on the stand and do what must have been a
25 nightmare, testify against his own friend and cousin.

1 How did defendants respond to that? They got up and gave
2 Robert Corrina's mom a subpoena and told her, you might be a
3 witness and you've got to get out of court. And they escorted
4 her out of the courtroom, to make sure Mr. Corrina didn't even
5 have his own mom here in court to support him.

6 That's the kind of scorched earth tactics that she
7 undertook, denying her own responsibility for her actions to
8 try to save herself. Has she changed?

9 Now at the eleventh hour, as the Court indicated at the
10 beginning of this case, we have the letter from Mr. Bloom.
11 He's not here today. Why? Well, a quote from his letter.
12 This is what Mr. Bloom wrote to the Court:

13 "It is important to Ms. Waters that Judge Burgess is aware
14 that she was not happy with what might be seen as an overly
15 aggressive response by my to the manner in which Judge Burgess
16 conducted the trial and the proceedings that took place prior
17 to the trial. My style is not her style.

18 "Ms. Waters suggested that it might be best if I did not
19 attend court on the day of sentencing and that Mr. Fox would
20 speak for her on that date. She believes my absence on that
21 date would signal to the judge she was not happy with my
22 response to the various rulings by Judge Burgess. She was,
23 and is, hopeful that Judge Burgess will not punish her for any
24 antipathy he might have for me and my approach. She believes
25 that her request that I absent myself at sentencing would make

1 her feelings clear to Judge Burgess. "

2 I don't know which is more insulting about this letter,
3 the fact that they think you might somehow be affected by
4 personal feelings toward an attorney, or if they think they
5 can fool us by this last minute letter; that we didn't sit
6 here for a month and watch how closely she and Mr. Bloom were.
7 Were there bad feelings in this case at times between the
8 attorneys? Yeah, there appeared to be. They appeared to be
9 directed all toward Mr. Fox who was not being rabid enough for
10 Ms. Waters' and Mr. Bloom's tastes.

11 She chose Bob Bloom. She had two excellent attorneys in
12 the Federal Public Defenders office, but she took
13 extraordinary steps to make sure Bob Bloom represented her.
14 She went into court and basically lied to the Court saying, I
15 have the money to pay for Mr. Bloom to represent me throughout
16 this case, when in fact she clearly didn't, and then got Mr.
17 Bloom appointed to the CJA panel so he could be paid, at
18 government expense, for a panel that he wasn't even a part of.
19 And now she comes at this eleventh hour fearful that it might
20 hurt her and says, oh, gee, I didn't like Mr. Bloom's actions.
21 I'm so angry at the way he treated the Court. It's insulting.

22 This defendant comes before the Court today and asks for
23 mercy. She could have cooperated, she could have proven that
24 she was worthy of being shown mercy by this Court, but she
25 chose a different path.

1 The United States comes before this Court and we also ask
2 for mercy. That's why we're not asking for 30 years as
3 required by the Sentencing Guidelines; we're not even asking
4 for 20 years, as Eric McDavid received in the Eastern District
5 of California. But we are strongly asking for a ten-year
6 sentence of imprisonment because that not only shows mercy for
7 this defendant, but it also shows justice to the public at
8 large.

9 We are asking the Court to remember that the American
10 people will view this sentence, her codefendants will view
11 this sentence, and all the victims are watching this sentence.
12 It should be no less than ten years.

13 And I will remind the Court what you are already keenly
14 aware of. Even after this sentence, this defendant still
15 holds the key. She has not chosen to cooperate up to this
16 point in time, but after sentencing, for a year she could
17 change her mind and come in and cooperate with the United
18 States and put herself in a position of perhaps reducing her
19 sentence.

20 She doesn't want to ever make a difficult decision. She
21 wants the Court to do her work for her. She's 32 years old.
22 It's time for her to be held accountable for her own actions.
23 It's time for her to make the difficult decisions that so far
24 she has avoided.

25 THE COURT: All right. Mr. Fox.

1 MR. FOX: Did the Court want to hear from --

2 THE COURT: No, I will hear from you.

3 MR. FOX: Thank you.

4 May it please the Court, counsel.

5 One of the reasons I think that we put sentencing off for
6 a number of months after a trial is to give everyone a chance
7 to sit back, take account of what took place, let emotions
8 calm down, and have a more reasoned approach to sentencing
9 issues. This was a contentious trial, there's no question,
10 and I can't stand here and point my finger and say that all
11 the issue comments came from the other side because they
12 certainly came from our side of the courtroom. I'm not going
13 to dispute that.

14 I told you once, Your Honor, that I can't apologize for
15 what other people do. I think I told you that one day when
16 Mr. Bloom had forgotten his notebook at his hotel room, and I
17 said I don't usually apologize for what other people do, and I
18 guess in this instance I can't apologize for Mr. Bloom's
19 behavior.

20 But I think the reason, as I said, we delay sentencing
21 months after a trial is to let the tempers tone down so we can
22 sort out what the jury found and what the jury didn't find.
23 And I could stand up here and reargue our case, as the
24 government just did. I have a lot of things to say about what
25 Mr. Bartlett said about the evidence. We had a different view

1 of the evidence. This folder that Mr. Bartlett just spent so
2 much time talking about, it turns out Ms. Kolar lied. She
3 deceived the Court and the government about the chain of
4 custody of that folder. This was revealed by the government,
5 and I respected the fact that the government came forward and
6 told us this.

7 But, I guess, let's put that aside because this isn't the
8 time to reargue the facts of the case. We had a trial, the
9 government made a series of allegations against Ms. Waters,
10 the jury rejected some of those allegations, found Ms. Waters
11 guilty of others, and now it's the time to look at Ms. Waters
12 as a person and determine what a fair and just and
13 compassionate sentence should be.

14 I think that when you look at the 250 letters that have
15 been generated and you see that they are from people from all
16 walks of life, from Ms. Waters' past and her present, many of
17 these people may think that based upon their knowledge of Ms.
18 Waters, she was innocent. They didn't sit through the trial,
19 but that's their opinion. And the fact that they come to that
20 conclusion is based upon their observations of how Ms. Waters
21 acts on a daily basis, how she's acted, how she's conducted
22 her life.

23 These letters -- well, let me go back.

24 At trial, the Court heard about the Watch campaign, and
25 that was one slice of Ms. Waters' life back in the late '90s

1 and early 2000s. But since Ms. Waters went to California,
2 since she moved down there, the Court can see what type of
3 person she is, how she conducts her life on a daily basis.

4 This is a person who lives a modest life. She's not
5 living a life of excess. She's in the community of parents,
6 of musicians in the Bay Area. She's someone that helps out
7 the community. She plays at benefits, she plays at senior
8 citizen homes. This is a person who's dedicated her life to
9 improving the community around her. These letters of support
10 are not from this mythical ecoterrorist network; they're not
11 from the Earth Liberation Front. These are from regular
12 people that see Ms. Waters, that know her, and see the types
13 of good things she does in the community.

14 This is someone, whatever the jury's verdict about what
15 happened seven years ago, this is someone who has given a lot
16 to her community, and who can continue to give a lot to her
17 community. She's someone that has played a positive role.
18 The type of things that she's done are the types of things
19 that we want people who come to the criminal justice system to
20 do when they get out of prison. Ms. Waters has already done
21 that.

22 So I guess what the Court has to figure out is, is Ms.
23 Waters the type of person who needs to be locked up behind
24 concertina wire with armed guards and dogs and chains and
25 locks? Does she need to be put into a prison for the length

1 of time that the government is asking for? And she's not.
2 She's not the type of person that needs incarceration for an
3 extended period of time.

4 Now, the government has said that this was a horrible
5 crime, and we have no dispute with that. The people who did
6 this were completely misguided. And our heart goes out to the
7 people who suffered from this.

8 I would note that some of the people who are victims of
9 this crime have filed letters with this Court saying that they
10 use the Center for Urban Horticulture, they were master
11 gardeners, and they still believe that Ms. Waters deserves
12 leniency from this Court. So not everyone who was affected by
13 this believes that Ms. Waters should be locked up for ten
14 years or more.

15 And I think what the Court has to do is to weigh this
16 arson in 2001 committed by a group of people who were
17 completely misguided and to see whether or not that in and of
18 itself is a reason to lock up Ms. Waters now in 2008. I would
19 suggest that after reviewing everything that's been submitted,
20 there is no valid penological reason to lock Ms. Waters up, to
21 take her away from her family and from the community for such
22 an extended period of time.

23 Now, we don't agree with the verdict of the jury, and it's
24 hard sometimes when you come to court. I mean, there really
25 is -- we are really in a no win situation. We can't come to

1 court and say, oh, well, we've insisted on our innocence. Ms.
2 Waters insists on her innocence, but now that she's been
3 convicted, she takes responsibility for her actions. That
4 can't logically take place.

5 So we're really in the position of coming to court
6 insisting on what she's always insisted on, that Ms. Waters
7 has insisted on her innocence and coming in with dignity and
8 asking the Court to impose a fair sentence.

9 So the Court's not going to be able to hear and will never
10 hear any type of acceptance of responsibility of the type that
11 the government is holding out is what needs to happen. Ms.
12 Waters is innocent. She disagrees with the jury's verdict,
13 but she has to accept it. That's the rule of law. We have to
14 accept what the jury said. We're going to appeal it, but we
15 have to accept it.

16 But I would ask that the Court trust the jury's verdict as
17 well and that the government give due respect to the jury's
18 verdict.

19 The jury trial is not just some cog in the transmission
20 belt that goes from indictment to prison. The jury trial is
21 not just some formality where the government brings in
22 hundreds of pieces of evidence and the jurors agree with the
23 government and sends them off to prison. It's not that type
24 of a thing. And a jury trial right is not just the
25 government's tool, but rather the jury trial right is the

1 shield of defendants, particularly in cases where the emotions
2 run high, particularly in cases where the government is
3 alleging terrorism. The jury verdict has to be respected by
4 all parties to this decision, and it's a shield for Ms.
5 Waters. And she asks the Court, and pleads with the Court, to
6 give effect to the jury's verdict.

7 What that means is the jury didn't convict Ms. Waters of
8 bombing anything. It's a term that Mr. Bartlett used. It was
9 what was alleged at trial. The jury didn't convict her of
10 bombing anything. The jury didn't convict Ms. Waters of
11 conspiracy. They didn't convict her of conspiracy, and I'm
12 going to address the significance of that in a few seconds.

13 But what we are asking the Court to do is to honor and to
14 trust that the jurors that came into court and sat in that box
15 over there, that they reached the right decision. We are
16 going to appeal, there's no question about that. But for
17 sentencing purposes, we have to trust what the jury did. And
18 we can't second-guess what they did.

19 Trust in the jury system and the rule of law is really,
20 really important in today's climate. Mr. Bartlett talked
21 about terrorism, and I note that the government is engaged in
22 a war on terrorism. A lot of people's rights have been
23 trampled by this war on terrorism. The Supreme Court's
24 decision last week should give pause to everyone about what
25 can be done in fighting the war on terrorism and whether or

1 not we can just ignore due process of law.

2 I cited in my materials to experiences in other countries
3 and other times. Other countries, liberal democracies like
4 England that dealt with terrorism issues. Maybe it seems
5 remote to talk about what happened in the 1970s in England.
6 Maybe I'm getting old and it doesn't seem that long ago. I
7 actually lived in Ireland in the '70s, so I lived through some
8 of these events.

9 But everything that we're going through now has gone on in
10 other countries. The IRA bombing campaigns in England in the
11 '70s and '80s were horrible because lots of people died. The
12 English government's judicial response was hideous. They
13 tried to do away with jury trials in terrorism cases. People
14 were convicted who insisted on their innocence and spent years
15 in prison until they finally were vindicated. And I talked
16 about the guilt before in the Maguire Seven.

17 Again, 30 years ago may seem like a long time ago, but we
18 can learn from the experiences of other countries. We can
19 learn by seeing how they responded to terrorism and how they
20 messed up, and how they ran roughshod over the rights of
21 people.

22 I attached to my sentencing memo some articles, or at
23 least one article, contemporaneous with the convictions of the
24 Guildford Four bombing case, where the moral outrage was the
25 same as, I'm sure, coming from the government's table today,

1 and yet those people turned out to be innocent and they spent
2 16 years in prison for something they didn't do.

3 Again, I bring that up only to tell the Court, this has
4 happened before. Someone has gone through a terrorism trial,
5 insisted on their innocence, and turned out to be innocent.
6 And that's why we have to learn from that experience and have
7 respect for the jury's verdict.

8 We have to have respect for the fact that the jurors
9 didn't find Ms. Waters guilty of conspiracy. We have to have
10 respect for the fact that the jury didn't convict Ms. Waters
11 of the arson at Susanville. The government didn't even file
12 charges on that basis. There was no indictment ever returned
13 against Ms. Waters down in the Eastern District of California
14 for that arson. Yet the government spends a lot of its
15 sentencing memo talking about Ms. Waters being involved in the
16 second arson.

17 I've got to respond to that, and that's why I spent -- I
18 felt strange including in my sentencing memo, which really
19 ought to be about Ms. Waters and her character, talking about
20 Stan Meyerhoff and his character. But it's important because
21 it goes to the issue of proportionality.

22 The government says, well, Ms. Waters is most similar to
23 Joyanna Zacher and Nathan Block and they got 94 months, or 92
24 months. Well, Joanna Zacher and Nathan Block pled guilty to
25 conspiracy, and they also pled guilty to being involved in two

1 separate arsons, the Romania II arson and the Jefferson Poplar
2 Farm arson.

3 So if we're looking at proportionality, if those people
4 got 92 months because they admitted being in the conspiracy
5 and they admitted involvement in two arsons, then you have to
6 look at one arson versus two arsons. Well, the government
7 says, well, Ms. Waters was involved in two arsons. We're not
8 going to try to prove it. We're not going to bring any
9 witnesses in to say that. We're going to attach Stan
10 Meyerhoff's 302 report to our sentencing memo, but we're not
11 going to bring him to court.

12 I object to the Court considering the 302 reports that's
13 attached to this government's sentencing memo. Under Ninth
14 Circuit cases, the ones I've cited in my brief, the Court
15 can't consider that type of unreliable hearsay of an alleged
16 coconspirator in a proffer session as a basis for sentencing.

17 The government will never bring Stan Meyerhoff to court
18 because he's unreliable. Everything that I filed with the
19 Court -- his involvement in subsequent surveillance of Naval
20 installations for which he's never been charged, for what I
21 can only imagine would be sabotage against a Naval
22 installation; his attempted murder; his consistent lies, even
23 to the U.S. Probation Service officer in the presentence
24 report about his drug use -- all of these things show that
25 he's unreliable.

1 But also it's contradicted by what the other people who
2 were at Susanville said. Darren Thurston, who also was a
3 cooperating witness for the government, said very clearly that
4 Briana, he had never met Briana Waters. He doesn't know that
5 person.

6 Jennifer Kolar, who the government trots out as being a
7 credible witness, she testified in this court about Susanville
8 and never once said that Briana Waters was there.

9 So what Stan Meyerhoff now says after he wants the
10 government to be his advocate -- and those are his own words,
11 caught on tape with his fiancée, Lacey Phyllabaum -- he's just
12 simply saying what the government wants him to say because he
13 thinks it's going to get him a better sentence. But that's
14 why the government won't bring him in. That's why they never
15 brought him in.

16 And I only, again, I'm only taking precious time because
17 it's important to show that Briana Waters has not been
18 convicted, has not even been charged, and had no involvement
19 in the Susanville arson. And then we're only dealing with one
20 arson, we're not dealing with two. And the proportionality
21 analysis is then driven by that. We are talking about one
22 arson, not two.

23 The jury also, as I said, did not convict Ms. Waters of
24 conspiracy. They didn't convict her of conspiracy. And so
25 I'm offended when the government -- I guess maybe I offend

1 easily -- but I'm offended by the government's continued
2 reference to Waters and her coconspirators. There are no
3 coconspirators. The jury didn't find her guilty of
4 conspiracy. And it's basically an insult to the jury to say,
5 well, we believe that she's a coconspirator there, but we know
6 you didn't find her guilty of that, but we're still going to
7 paint her in that terminology.

8 That's significant. The conspiracy counts are significant
9 because it ties into the terrorism aspect.

10 I made a number of legal arguments in my brief as to why
11 the terrorism enhancement doesn't apply in this case. I'm not
12 going to spend any time on that unless the Court has
13 questions, but to me the key issue, apart from the other legal
14 arguments I made, is whether the government can show the
15 motivational element. Whether they can show that Ms. Waters
16 intended to take an action to intimidate government.

17 Not whether coconspirators of a conspiracy count for which
18 the jury didn't find her guilty had that intent, not other
19 people accomplices. But what was Ms. Waters intent? Has the
20 government come in with clear and convincing evidence that Ms.
21 Waters had the motivational element of the terrorism
22 enhancement? Because that's what the Ninth Circuit says they
23 need, clear and convincing evidence, because of the completely
24 disproportionate impact in sentencing that the terrorism
25 enhancement has.

1 The only evidence that the government cites to as evidence
2 of Ms. Waters' motivation is, in their sentencing memorandum
3 they cite to Jennifer Kolar's testimony that "we as a group,"
4 meaning the Book Clubs, the various training groups that Ms.
5 Kolar participated in, "We as a group decided to move into
6 dealing with genetic engineering issues and we decided to
7 target Toby Bradshaw's research." That's the first bit of
8 evidence that they point to.

9 Well, "we as a group" means the training sessions, the
10 Book Club meetings, that the testimony was very clear that Ms.
11 Waters never attended, she wasn't a part of. And the jury's
12 verdict refusing to find her guilty of the conspiracy count
13 shows that you can't charge Ms. Waters with what the Book Club
14 wanted to do.

15 The second piece of evidence are the communiqués that were
16 issued. The communiqués that Lacey Philabaum wrote after the
17 arsons where Lacey Philabaum for the first time found out
18 what was going on down at the Jefferson Poplar Farm, the other
19 action, and she sat down with some of the other people and
20 wrote these communiqués. She testified that Briana Waters
21 wasn't there. There was no evidence that Briana Waters knew
22 anything about these communiqués, what was going to be in
23 them, what the focus was. And again, the fact that she wasn't
24 convicted of conspiracy means that you can't charge her with
25 knowledge of what the coconspirators were doing or the

1 coconspirators' motivations.

2 Now, Judge Aiken, down in Oregon, dealt with the terrorism
3 issue. Actually, she had a full day hearing on the legal
4 arguments. But the big difference between the Oregon cases
5 and Ms. Waters' case is that the defendants in that case pled
6 guilty and admitted facts sufficient to find a terrorism
7 enhancement.

8 Yesterday I filed under seal, because it was a sealed plea
9 agreement, Suzanne Savoie's guilty plea statement. That
10 guilty plea statement, Ms. Savoie admitted factually the
11 elements for the terrorism enhancement. She admitted that the
12 goals of the conspiracy were to intimidate the government and
13 to retaliate against the government.

14 All the other people down in Oregon -- I filed one, or
15 attached to my memo Daniel McGowan's guilty plea statement,
16 but I believe that Zacher's and Block's had identical
17 language. They admitted also the elements of the terrorism
18 enhancement.

19 So those cases are completely different than this case
20 because those people admitted that what they did was intended
21 to influence the course of government.

22 Here we had a trial, and the jury didn't convict Ms.
23 Waters of conspiracy. I guess, given their failure to convict
24 on conspiracy, I'm asking the Court to have respect for that
25 jury verdict, to trust that those 12 people knew what they

1 were doing, and they rejected the government's arguments.

2 So at this point, the only thing that Ms. Waters is being
3 sentenced for is being an accomplice to one arson, on one day
4 in 2001. There are two jurisdictional basis for that one
5 count, for that one act, but it's only one act. We don't know
6 what the jury found Ms. Waters' motivation to be. We don't
7 know that. That wasn't something that they were asked to
8 determine. And because they didn't find her guilty of
9 conspiracy, you can't give her the terrorism enhancement
10 because there's no evidence as to what Ms. Waters' intent was.

11 Now, the terrorism enhancement is important not just
12 because it completely skews the sentencing structure, but it
13 also has significance for the Bureau of Prisons and has
14 significance as to how Ms. Waters is going to be treated by
15 the Bureau of Prisons, what her custody status will be, and
16 what will happen maybe next year in a different political
17 climate or a year after that. We don't know. But if the
18 Court finds a terrorism enhancement, I can assure the Court
19 that the conditions of confinement are probably going to be
20 more severe for Ms. Waters than if the Court doesn't find it.

21 So it's significant, not just in terms of skewing the
22 sentencing scoring, but in terms of the conditions of
23 confinement.

24 We're dealing with one person today, Ms. Waters; we're not
25 dealing with the ELF. You know, Mr. Bartlett talks about the

1 Street of Dreams arsons. There could have been nothing worse
2 for Ms. Waters than for that to have taken place. That is not
3 something that Ms. Waters ever wanted to happen. She had
4 obviously no part of it, and it is really insulting to say
5 that her going to trial encourages that type of behavior.

6 That's not who Ms. Waters is. She will tell you in a few
7 minutes that she does not want to be a martyr for anyone's
8 cause. The fact that there are people out there -- and we
9 don't know that it was the ELF that set that fire. I mean, we
10 simply don't know anything about it. I'm not privy to any of
11 the investigation. But that fire was a disaster for Ms.
12 Waters, and it contributes to the climate of fear. And, yes,
13 there is a climate of fear in this country about terrorism
14 cases. And did that have an effect on the trial? Yeah. That
15 climate of fear clearly had an effect on the trial.

16 You know, true, the jury didn't return verdicts on
17 everything the government was asking for, but in other
18 circumstances, maybe the jury would have found Ms. Waters not
19 guilty, but there was this climate of fear in this country
20 about terrorism, and those fires out in Woodinville
21 contributed to that. That's not something that we in any way
22 condone, and we believe that it was very, very damaging to Ms.
23 Waters.

24 So you have to look at Ms. Waters not as a representative
25 of the Earth Liberation Front, but as a person, as a full

1 person. A person who's being sentenced for something that
2 happened seven years ago. Someone who's very functional in
3 the community, who has many ties to the community. And the
4 Court does have the power to impose probation. The Court has
5 that power.

6 The government has poo-pooed that. They haven't given any
7 legal analysis to the fact that the statute, as written, does
8 not preclude the Court from suspending the mandatory five
9 years in prison. Other statutes, even in Section 844, talk
10 about how the Court can suspend mandatory minimums. The
11 mandatory minimum drug sentences have a provision about how
12 the Court can suspend it.

13 844(f) and (i), mandatory minimums don't have that
14 language in it. The Court has the power to impose probation.
15 I suppose, in this environment, the Court can even impose the
16 ten years that the government is seeking and suspend a portion
17 of that. The Court could suspend three years, the Court could
18 suspend five years. The Court has incredible discretion as to
19 the type of sentence that they can impose, and can tailor that
20 sentence to the individualized issues that pertain to a
21 particular defendant.

22 Now, in terms of calculating the guideline range, the
23 first step in the sentencing process. I have made objections
24 in our materials to the government's and the U.S. Probation
25 Service's calculations. We dispute some issues about the

1 value of the building. Do we use the value that the
2 University of Washington itself gave, the 1984 value adjusted
3 for inflation? That changes the sentence by one point or so,
4 or the calculations by one point. I'm not going to spend much
5 more time on that. We believe that the sentence can be
6 adjusted -- the guideline calculations can be adjusted
7 downwards based on other factors.

8 Family circumstances, you know, is correct. Mr. Bartlett
9 says there's no evidence that Ms. Waters loves her daughter
10 more than he loves his daughters or I love my daughters. And
11 I think sometimes in our judicial system, we get anesthetized
12 to the human costs of mandatory incarceration. There are a
13 lot of people that come through the court with small children
14 who go away for long periods of time. There's no question
15 about that. And sometimes as lawyers or judges, we become
16 anesthetized to that. We forget what the true human impact is
17 of those sentencing decisions because we're so used to,
18 particularly in the federal system, to pass out sentences in
19 five-year increments. There's a whole series of mandatory
20 minimums, five years for this, five years for that, and we
21 forget what the impact of that is on people with young
22 children.

23 I have to look back at myself, when I represented Ms.
24 Waters, I had to look back at myself as a lawyer where I've
25 talked to clients about plea bargains in the past and they

1 say, well, I have a young son, and I say, well, you know, you
2 really need to take this deal and go away for four years to
3 avoid being sent off for a much longer period of time. And I
4 wonder if I've been hardened myself where I've not thought
5 about the effect that that has on young children. And I have
6 to think, you know, have I been insensitive, possibly, because
7 of race and gender issues, or class issues, that I have not
8 paid attention to that?

9 But the effects are there. And in the past, those
10 effects, we brush those aside because of the mandatory nature
11 of sentencing.

12 We're in a new era. Things have changed since the Supreme
13 Court issued its decision a few years ago. We no longer have
14 to callously disregard people's children in the mix when we
15 are sentencing people. We don't have to do that anymore, the
16 Court doesn't have to do that anymore.

17 And should we think about the effect of prolonged
18 incarceration on a three-year-old child? Yes, we have to
19 consider that.

20 Is it extraordinary? Well, I agree, it's probably no more
21 extraordinary than in other cases where people have young
22 children, where they are mother's of young children.

23 Is it humane to consider that? Yes.

24 Is it compassionate to consider that? Yes.

25 Is it just to consider that? Yes.

1 And so I think that the family circumstances need to be
2 considered by this Court, and adjust the sentence guideline's
3 range downwards.

4 Other things, such as good works. The Watch Mountain
5 campaign, it wasn't just a college project. It contained Ms.
6 Waters' life for a significant period of time. She helped
7 other people. It wasn't just she helped the town prevent the
8 town from being obliterated by having the old growth forest
9 cut down. It was a peaceful campaign. It was a campaign that
10 brought together people from diverse backgrounds who
11 ordinarily wouldn't be getting along, and it worked. It was
12 successful. And the film documented this peaceful, nonviolent
13 campaign to promote that model of social change around the
14 country.

15 So it wasn't just a college project, it was something of
16 significance. And when we're dealing with sentencing, this is
17 like "This is Your Life" where everything comes in. This is a
18 piece of Ms. Waters' life that was important. She wasn't just
19 a college student. She was doing something for society.

20 Everything that she's done down in the Bay Area, the
21 probation department said, well, a few benefit concerts.
22 Well, these letters show more than a few benefit concerts. It
23 shows a consistent concern for the affairs of others. A
24 concern for senior citizens, a concern for refugees in
25 different parts of the world. Ms. Waters didn't have to do

1 any of those things. She didn't have to spend her days going
2 to senior citizen centers and playing the violin for them.
3 She didn't have to play the benefit concerts for refugees.
4 She didn't have to do that. That's not just what ordinary
5 people do. It's what she did. It shows her commitment to her
6 community.

7 Is she entitled to get consideration for that at
8 sentencing? Yes. That's what we are here for. We're here to
9 figure out what sentence she should get based upon who she is
10 and what she's done. Does that reduce her sentence under the
11 guidelines? Yes.

12 Post offense rehabilitation. Well, it's hard to talk
13 about rehabilitation when the position is I didn't do
14 anything. But even assuming the government's correct, giving
15 credence to the jury's verdict, you have to look at what Ms.
16 Waters has done in seven years. Has she been out with other
17 ELF people? Lacey Phyllabaum and Stan Meyerhoff spent the
18 last seven years together. Ms. Waters didn't have any
19 partners that were part of the Earth Liberation Front. Does
20 she have a secret hidden arms cache, as Mr. Thurston and Ms.
21 Gerlach and Mr. Meyerhoff had? No. Was she in the country
22 illegally with fake passports or identification as Mr.
23 Thurston was? No. Was she involved in drugs for the last
24 seven years as Chelsea Gerlach was? No.

25 So you have to look at what she's done and say, well,

1 given -- let's assume, assume the government is correct for
2 2001, where is she today? Has there been post-offense
3 rehabilitation? Is she entitled to ask the Court to adjust
4 downward the guidelines? Yes. Clearly under the case law
5 she's entitled to do that. So we ask that the Court can and
6 should adjust the guidelines downward.

7 And I think that when you look at all these things, you
8 are trying to calculate the Sentencing Guidelines, you put
9 aside things that she wasn't convicted of and you put aside
10 the conspiracy charge, I calculated the range of six to twelve
11 months with a level of ten.

12 So then you look at the 3553 factors, and you look at
13 comparability and proportionality. And then you really do
14 have to look at all the other sentences for related cases, or
15 what the government claims are related cases, and that
16 includes the Oregon cases.

17 If you look at all of the sentences that have been
18 imposed, the average sentence is one to two years per arson.
19 If you look at what people in Oregon got and you look at
20 people up here, the average, they tend to be in the one to two
21 year range per arson. Jennifer Kolar was involved in four,
22 maybe five arsons. She trained the Book Club in secret
23 communications, she built devices and placed them herself. A
24 core member. Her plea was to a seven year range.

25 Stan Meyerhoff, you know, dozens of arsons. Attempted

1 assassinations, continuing criminal activity, spying on Naval
2 installations and the like.

3 Again, basically one to two years per arson. That's the
4 pattern. True, a lot of those people cooperated. But then if
5 you weigh their cooperation against other factors unique to
6 them, which don't exist in this case, such as integral roles
7 in the Earth Liberation Front, writing the arson manual and
8 publicizing it on the Internet, arms caches and the drug use,
9 all those things that a lot of those people in Oregon had,
10 that balances out against that cooperation.

11 And so even though, even assuming the government's
12 calculations on obstruction, which we disagree with, but even
13 assuming that's correct, the guidelines range is still not
14 that much different than what we're asking for.

15 If you say one to two years for arson for someone that is,
16 you know, integrally involved in the Earth Liberation Front
17 and has done all the things Stan Meyerhoff has done, well, you
18 balance that against his cooperation and you end up, for
19 someone like Ms. Waters, with the one to two years. And
20 that's why we asked the Court to impose five years and to
21 suspend three-and-a-half years of that.

22 That's proportionate, it's fair, it takes into account her
23 family circumstances, it takes into account everything that
24 she's done in the last seven years that we ask the Court to
25 give her credit for.

1 I just have a few other minor points I would like to deal
2 with at the conclusion.

3 I notice that the presentence report from the probation
4 department asks for a computer ban in the conditions of
5 supervision for post-release supervision.

6 There's nothing about this case that would justify that.
7 I have cited cases in my memo that under the Ninth Circuit
8 case law you can't impose those restrictions, and I would ask
9 the Court not to impose those in terms of conditions of
10 supervision.

11 In terms of the Bureau of Prisons and placement. It's
12 very important to Ms. Waters that she be placed in Dublin, in
13 California. Her family is down there. Even if she is serving
14 prison time, she can still see her daughter during visits.

15 Recently her husband has been up -- or Mr. Landgraf has
16 been up here with Kalliope and they've had some visits at the
17 FDC, but he has to go back to California, and it would be
18 very, very bad for Kalliope if she couldn't see Ms. Waters at
19 all.

20 Ms. Waters' release community is down in the Bay Area.
21 Her support community is there. Her father, who is aging and
22 has some illnesses, is down there. There's no reason not to
23 recommend placement at Dublin.

24 Suzanne Savoie apparently is in the camp unit, and it is
25 probably doubtful that Ms. Waters would end up in camp, and so

1 they can still be separated. I would ask the Court recommend
2 placement at Dublin, and if the Bureau of Prisons doesn't do
3 it, well, then I guess they won't do it. But I would ask the
4 Court to not treat Ms. Waters any differently than anyone else
5 who comes to court and asks for a placement at a specific
6 institution.

7 I have also asked the Court to sign an order of correcting
8 the presentence report. The presentence report will follow
9 Ms. Waters to prison. If there are factual allegations in the
10 presentence report that are not necessary for the Court to
11 resolve when imposing sentence, such as the allegations about
12 Susanville, I would ask, as the rule requires, that either a
13 new presentence report be issued that deletes those references
14 or that the Court enter an order that is attached to the
15 presentence report saying the Court is not finding those
16 factors.

17 In terms of an appeal bond, I don't know if the Court
18 wants to hear my presentation now or after sentencing on that?

19 THE COURT: We will hear it at that time.

20 MR. FOX: After sentencing?

21 THE COURT: Yes.

22 MR. FOX: Okay. So basically, Your Honor, we're
23 asking the Court to sit back after three months, after a
24 contentious trial, to look at what the jury convicted Ms.
25 Waters of, and to sentence her in accordance, not what the

1 government hoped the jury would convict her of, but what she
2 was actually convicted of. That's what I would ask the Court
3 to do, and I appreciate it.

4 Thank you.

5 THE COURT: Thank you.

6 Let's take our morning recess, and then we will continue.

7 All right.

8 THE CLERK: All rise. Court is at recess.

9 (Recessed at 10:30 a.m.)

10 THE COURT: I have heard from Mr. Fox now.

11 Ms. Waters, as a defendant, you have a right to speak to
12 your situation here as to what's taken place as to sentencing,
13 so anything you want to say, now would be the time to do that.

14 THE DEFENDANT: Is it okay if I use my notes?

15 THE COURT: That's all right.

16 THE DEFENDANT: Judge Burgess, I'm very grateful to
17 be able to have this opportunity to talk to the Court. There
18 have been so many things that so many people have said about
19 me and written about me, and a lot of these people don't
20 actually know me, so I'm really happy to be able to speak the
21 truth. And it's tempting to -- I want to respond to a lot of
22 things that the prosecution said, but I know the goal is not
23 to reargue the case, and I just want to talk about who I am.

24 I don't want to go into too much about Mr. Bloom because
25 we've already talked about him today. But basically I feel

1 that he is not me, and just because he's my lawyer doesn't
2 mean that we are one person. And just because I hired him
3 does not mean that I knew everything that he was going to do
4 in the trial, and I did, I did disagree with his approach in a
5 number of ways, and that's why I asked him not to be here
6 today because I just thought it would be better. But he is
7 not who I am, and that's why I am addressing the Court, to
8 tell you who I am.

9 I'm a mother, as you know. I'm a daughter and a partner
10 and I'm a friend and I'm a teacher, and I'm not a terrorist.

11 I ask you to bear with me.

12 I am a person who lives in peace. I do believe in
13 spreading compassion in the world, not hatred. I do believe
14 that our society and our planet is in need of healing, but not
15 through violence or force of any kind.

16 The one thing that I do agree with the prosecution about
17 is the seriousness of this crime. I don't agree with it in
18 any way. I don't endorse it. I think that it was really
19 wrong, and I do pray for the victims that were affected. I
20 hope that they are healing from the trauma and the stress that
21 it caused them.

22 I also pray for the people who did lie on the stand to
23 save themselves. It's amazing to me what people can do when
24 they are scared.

25 Your Honor, I am disappointed about the jury's decision,

1 but I know that you are bound by it today and I respect that.
2 I wish to make it clear that I am not the person that the
3 prosecution has painted this evil, negative picture of. And
4 I'm also not the martyr that other people might praise or
5 support. They all seem to think that I'm someone that I'm
6 actually not.

7 I believe that I am a valuable, contributing member of my
8 community and society, and I don't agree with property
9 destruction or violence of any kind to further a cause, and I
10 don't want to be a martyr for any cause. My cause is to take
11 care of my family.

12 And I know that this is not about how much I love my
13 daughter because everyone loves their kids. But I am her
14 mother and she does need me, and every day that I am away from
15 her is more pain than I can describe.

16 I know that you have read a lot of letters about my life
17 and about who I am, and so I'm not going to go into a lot of
18 detail about what I have done because there's already been so
19 much written about that.

20 But I just wanted to say that before I was incarcerated,
21 what seems like a very long time ago, I spent almost all my
22 time with my daughter caring for her and never spent one night
23 away from her.

24 I also spend my time teaching music to children and to
25 adults and participating in a lot of activities with my

1 neighborhood parents group. You know, I am not Mother Teresa,
2 but I think we do do a lot of things to help people: helping
3 to cook meals for families in need and education, you know,
4 educational events for our children, as well as advocating a
5 cleaner and safer neighborhood to live in. I've obviously not
6 been able to do any of these things from prison and will not
7 be able to.

8 I am not begging for your mercy, but I am asking you to
9 consider the facts of my life in your sentence. I'm asking
10 you to consider everything that you have read when deciding
11 how long I need to be separated from my family and my
12 community. Hundreds of people will be affected by your
13 decision, and the most important one is, obviously, my
14 daughter.

15 My greatest desire is to care for her and nurture her
16 throughout her childhood. And I know that my life is more
17 valuable in society rather than in prison.

18 Your Honor, I do ask that you consider everything that I
19 have said in your sentencing decision, as well as in your
20 decision whether or not to release me pending self-surrender
21 to whatever prison I am assigned to. It would make such a
22 tremendous difference. I can't even describe what kind of a
23 difference it would make to be able to prepare my daughter
24 before serving my sentence.

25 I have no desire to flee, which would obviously create a

1 lot more pain for everyone involved. I just want to put this
2 experience behind me and move on with my life. Therefore I
3 will show up as I am required to by the Court, as I have
4 always done in the past throughout the course of this case.

5 I appreciate your time for listening to me, my words.

6 Thank you.

7 THE COURT: Now, Mr. Thomas, you prepared the
8 presentence report. Anything to add to that report in any
9 way?

10 THE PROBATION OFFICER: No, Your Honor.

11 THE COURT: Now, it was mentioned, Mr. Bartlett,
12 about someone from the University of Washington.

13 MR. BARTLETT: Your Honor, one of the victims in the
14 case, Linda Chalker-Scott, is here and has asked for just a
15 few moments of the Court's time.

16 THE COURT: All right, have her come forward.

17 I will have you identify yourself for the record, please.

18 MS. CHALKER-SCOTT: Thank you, I will. My name is
19 Linda Chalker-Scott.

20 THE COURT: Okay.

21 MS. CHALKER-SCOTT: Thank you, Your Honor, for
22 letting me speak. I also submitted a written statement to
23 you, but today I want to talk about something personal rather
24 than professional and how this has changed my life.

25 From 1997 to 2004 I was an associate professor at the

1 Center for Urban Horticulture. I'm one of those whose losses
2 were minimized and dehumanized by the arsonists and their
3 apologists who called them "collateral damage."

4 Just after 5 in the morning of May 21, 2001, the radio
5 reported a three-alarm fire at the Center for Urban
6 Horticulture. My first reaction was that I had left something
7 turned on in my lab and this was my fault. I turned to my
8 husband, Jim, and said "I've got to go in; tell the kids what
9 happened when they wake up."

10 I was the first person to arrive at the Center among those
11 of us who worked there. Firefighters and police were already
12 there, and I stood alone and helpless watching the smoke and
13 flames billow from the roof. Seeing the blackened hole that
14 was once Toby Bradshaw's office window, I was actually
15 relieved that the fire obviously hadn't started in my lab.
16 It was also obvious that I wouldn't be teaching class that
17 day, so I began making phone calls.

18 My mother, Charlotte Chalker, drove up from Tacoma to keep
19 me company (she's here with me today). As other faculty,
20 staff, and students arrived, we huddled together watching the
21 destruction. Once the fire was out, my mother and I
22 approached one of the firemen and begged him to see if my
23 childrens' framed artwork in my office was salvageable. Since
24 mine was only two doors away from Toby's office, I didn't hold
25 out much hope. So when the fireman emerged with all the

1 artwork, sooty but otherwise undamaged, I burst into tears.

2 In the four years prior to the firebombing, my son and
3 daughter would be dropped off at the Center after school while
4 I finished my work. When the weather was good they enjoyed
5 exploring the gardens, wetlands and woods around the Center.
6 Other times they would visit faculty, staff and students or do
7 their homework. They felt safe and secure at the Center, and
8 regarded the people there as part of their extended family.

9 This routine, and their sense of security, changed
10 permanently on May 21, 2001. They couldn't come to the Center
11 any longer, because there was no place to go and I was busy
12 with salvage and cleanup. Jim and I had to rely on
13 after-school programs and the hospitality of classmates'
14 families to take care of our 7-year-old son Jack and our
15 11-year-old daughter Charlotte. They were no longer able to
16 visit their friends at the Center, and they saw much less of
17 me during the many months of extra work that the firebombing
18 created.

19 On Briana Waters' web page is this statement regarding her
20 trial and conviction: "The stress of this situation has been
21 enormous on both Briana and her family, especially her
22 daughter." I have related my story to the Court to point out
23 that I, and my family, and especially my children, suffered
24 distress as a direct result of the senseless firebombing
25 planned and carried out by Briana and her accomplices. They

1 destroyed my workplace, they forcibly stole from me and my
2 family our time together, and they shattered my children's
3 faith in the inherent goodness of people.

4 This is only one story of 50 or more out there of how very
5 real impacts had an effect on very real people. And I would
6 plead the Court, please don't allow these impacts to be
7 further minimized and dehumanized by the contentiousness of
8 only one act.

9 Thank you.

10 THE COURT: Mr. Fox, I believe you had mentioned
11 that -- let me get the name?

12 MR. FOX: Marilyn Waters.

13 THE COURT: Marilyn Waters.

14 MR. FOX: And John Landgraf.

15 THE COURT: Right. Let me have you just state your
16 name for the record.

17 MRS. WATERS: Marilyn Waters.

18 THE COURT: All right.

19 MRS. WATERS: Your Honor, thank you for hearing me
20 speak today.

21 I'm here, too, on behalf of my daughter, Briana Waters.

22 With all my heart I plead her goodness. She's really a
23 good person. And the way that the government has categorized
24 her is not who she is. It is not who she is.

25 She is a gentle woman, and I join the 250 individuals who

1 have written to you, Your Honor, to tell you about who they
2 know. They know her as a kind and dear friend, a talented
3 musician, a skilled violin teacher, a good neighbor, and a
4 contributing member of her community.

5 They took the time to write those letters. A lot of
6 people wouldn't do that if that person really didn't mean a
7 lot to them.

8 Most importantly, Your Honor, I come before you on behalf
9 of someone who cannot be here to speak to you for herself.
10 Because she is only three years old, and she cannot speak with
11 you, Your Honor, herself, and I come before you to speak for
12 her.

13 I hope you can see this. I thought I was going to be
14 closer. This is my granddaughter, Kalliope.

15 This is Briana with her at Christmas. You can see
16 Briana's face.

17 Of course, all mothers love their children. There is no
18 question about that.

19 What I have observed, what I find extraordinary about
20 Briana's mothering is her patience. I have never seen a
21 mother more patient with her child than Briana, and it truly,
22 truly is extraordinary.

23 When she first found out that she was pregnant, she
24 completely embraced the prospecting role of motherhood by
25 reading all kinds of books about taking good care of yourself

1 when you are expecting, and then also reading about parenting.
2 She really embraced it fully and took the role of motherhood
3 very seriously, unlike many women who take it for granted, and
4 who even think of parenting, the role of parenting, as it is,
5 very difficult and burdensome. But she never regarded
6 parenting that way at all. She considered it a privilege and
7 something that she needed to do the best possible job that she
8 could do.

9 Ever since Kalliope was born she dedicated herself to the
10 care and nurturing of her child. She chose to be the primary
11 caregiver of her child, not to go out and work and put her in
12 daycare. And she had to make sacrifices to do that.

13 She was a violin teacher in the evening when her partner,
14 John, could care for Kalliope. But she spent all of her time,
15 because that's how important she regarded her role as
16 Kalliope's mother.

17 I feel grateful and blessed to live in a country where we
18 have a judicial system within which you have the latitude and
19 the power to decide Briana's faith here in your sentence. You
20 have the latitude to sentence her to the minimum of five years
21 and then suspend that to whatever period of time you consider
22 appropriate. And I am very grateful that you have that
23 ability to do that, Your Honor, and I humbly beseech you to
24 consider that sentence for her.

25 I also humbly beseech you, Your Honor, to release Briana

1 until the appointed report date so that she can prepare
2 Kalliope properly for their separation from each other.

3 Thank you, Your Honor.

4 THE COURT: All right.

5 Then I will hear from John Landgraf.

6 I will have you state your name.

7 MR. LANDGRAF: My name is John Landgraf. Can you
8 hear me?

9 THE COURT: Yes. Go ahead.

10 MR. LANDGRAF: Good morning, Your Honor, Judge
11 Burgess. I address you in this way because I'm speaking
12 directly to your highest self, that part of you which guides
13 your decision making and fills you with enough righteousness
14 to become a judge and decide what is right and what is wrong.
15 Your sense of compassion in the bounds of your heart is what
16 I'm speaking to.

17 I ask that you look beyond the negative ideas that have
18 been projected onto Briana and try to get a deeper
19 understanding of who she is. I ask for myself and on behalf
20 of our daughter that you act out of compassion as you
21 determine the sentence today. Consider her potential as a
22 mother, as a wife, as a teacher, as a helper of others, what
23 she can bring to this world given the opportunity. She's a
24 truly loving human being. I have come to know her very well,
25 and I can vouch for anyone, as much as Kalliope, that she is

1 truly loving.

2 I'm not asking for special treatment, only a just reading
3 of the circumstances.

4 In addition to the hundreds of pages of legal documents
5 that you have had to read in this case, I trust that you have
6 also personally read each of the letters received on behalf of
7 Briana and have gained further insight into her character by
8 reading them. Understand, I am talking to you because you are
9 in power to make a decision for the life Briana Waters, the
10 woman who I love, who has blessed me with her spirit and love
11 and miracle of our daughter.

12 Furthermore, I humbly ask that you give her the
13 opportunity to prove her honesty and self-surrender. I
14 promise you in this court, and the prosecutors, that I will
15 enable her transportation to that facility, whatever date is
16 called for.

17 While detractors might argue my creditworthiness, I've had
18 difficulty paying some bills, I say to look at my track record
19 in this whole case as evidence of my consequence and support
20 of Briana's desire to resolve this matter responsibly. From
21 the very first day when Special Agent Ted Halla approached me
22 on a first name basis in front of our home looking for Briana,
23 I steadfastly support her in dealing with this challenge of
24 maturity. I've been with her and helped her make every flight
25 to Seattle to meet with prosecutors, attend arraignments,

1 hearings, and finally, every single day of the trial in this
2 court, and the support will continue beyond the day when she
3 is finally released to rejoin her family after serving the
4 sentence you give her today.

5 It would be an immense help to our family, myself and
6 Kalliope, if she were granted the opportunity to
7 self-surrender, for time to explain personally to her daughter
8 where she is going and for how long and that that day will
9 eventually come for us to be reunited as a family.

10 Additionally, to bring some order to worldly affairs and
11 to prepare to serve our sentence. We are inextricably linked
12 and our affairs are in a state of disarray. Frankly, I need
13 her help in dealing with things and stabilizing our family
14 infrastructure and getting things in order for Kalliope for
15 the long run that we are facing. Our family has been torn
16 apart and I'm left out here in the world trying to put the
17 pieces together while being a father, focussed on our
18 daughter, and being present there every day, being strong and
19 loving and not falling apart by the weight on my shoulders.
20 If I look tired, it's because I am. There have been many
21 sleepless nights since I was last in this court, and there
22 will be, undoubtedly, many more.

23 Her sudden departure has left me sitting with immense
24 emotional pain. While there may seem to be nothing you can do
25 to alleviate the deep sadness of myself and daughter, any hope

1 you can give me that we will be together again as a family in
2 a more reasonable number of years than what the prosecutors
3 call for gives me hope. It helps me to be a better father to
4 be filled with hope and to share that with my daughter. I
5 would have never guessed that she would learn to count the
6 days of the year by counting down the months until her mother
7 is released from prison, which is unfortunately where we seem
8 to be now.

9 I am resolved to be a great father and strive through
10 every minute of every day to make the best of a situation for
11 our daughter, for Briana, and for myself.

12 While in the eyes of this Court Briana and I are domestic
13 partners, I would say in the eyes of God we are so much more
14 than that term implies. We are bonded at the highest level,
15 and we've made a spiritual commitment to be a family together.
16 That spiritual time transcends the physical separation that we
17 now live with and is a reminder that this, too, shall pass.
18 The day will come when this is all behind us, time served, and
19 we are actually able to move forward together. I pray that
20 will happen before Kalliope is a teenager, and sooner. I do
21 not wish for her to grow up feeling like an enemy of the
22 state, but rather filled with hope for a better future.

23 I ask that you consider the circumstances of our lives and
24 exercise grace in sentencing Briana Waters. Without hope and
25 faith the system crumbles from eternal decay. I wish to

1 impart to my daughter a true sense of hope and faith in this
2 world for the future. I do not wish her to grow up
3 disillusioned and hopeless but rather optimistic and
4 visionary. That is what we need for our civilization to
5 survive and evolve in a healthy way for future generations to
6 walk this earth.

7 I ask you to help me give her faith and to give her
8 personal order to the world she is born into and hope for the
9 system that governs it that they may develop compassion and
10 better serve their fellow man, woman, and child.

11 To this end, I ask finally that you exercise your strength
12 of discernment and right to pass judgment in this courtroom
13 with benevolence. I ask that you give a sentence today that
14 is as lenient as you are able, the mandatory minimum in this
15 case.

16 Thank you for the opportunity to address this Court.

17 THE COURT: Okay.

18 So I have given everybody a chance to talk. Anything else
19 that needs to be added here?

20 MR. FOX: No, Your Honor.

21 THE COURT: All right. Then the Court has the
22 unfortunate position, I guess, to sit in the way that we are
23 called to sit in judgment after some other judgment has been
24 passed -- of course, that's the verdict of the jury, in terms
25 of what this defendant has done. That's what the Court is

1 here to look at, what that is, and to determine what price, I
2 guess, is to be paid for that conviction, but also involved in
3 conviction, of course, is the conduct surrounding the
4 conviction.

5 It's hard to talk about this like it's, when you say arson
6 and leave it there. It doesn't really define what's happened
7 here. We're talking about the whole matter, all the facts,
8 all the evidence that the Court heard during the course of
9 trial to try to fashion, if you will, a sentence based on that
10 conduct. And the Court's called on its knowledge of what took
11 place here, as well as what's contained in the presentence
12 report, and to make that kind of a determination.

13 The first thing the Court is called on to do is to
14 determine what guideline range is to be applied to this case,
15 which doesn't necessarily determine the sentence, but since
16 the law has changed as to the status of the guidelines, as to
17 the mandatory and discretionary, as outlined, the Booker and
18 Fanfan cases and that sort of thing.

19 In looking at the guidelines dealing with those, the level
20 of the offense dealing with the conviction, and as well as an
21 adjustment based on the area of the law that's dealt with
22 terrorism, and that's where the matter goes from a level 24 to
23 a 36. Mr. Fox has raised questions as to that because Ms.
24 Waters does not stand convicted of conspiracy, that that
25 enhancement should not apply.

1 I don't think that you have to have a number of folks to
2 come to the conclusion as to whether the act would fit within
3 the description of conduct. So the Court is not of the
4 opinion that that enhancement shouldn't be. I heard the
5 evidence, and the facts, as I heard them, convinced me that
6 when I take the conduct into consideration, that the
7 conclusion I come to is that that enhancement would apply, and
8 that's the enhancement that the Court will accept and utilize.

9 There's another enhancement called adjustment for
10 obstruction of justice. This one is problematic in some ways
11 because it talks about that being false testimony in the
12 course of trial, and the false testimony seemed to come by way
13 of bringing you to some kind of conclusion that if a person
14 testifies and a jury rules or decides otherwise, then that
15 obviously has got to translate to being a lie, I guess, and if
16 you don't get up and agree with what's being presented, then
17 you get the enhancement.

18 That seems to be, as to the right to defend yourself and a
19 lot of other issues that it goes to, would tend to be
20 something that would be taken to a level that I don't know how
21 legally it necessarily can bring it to that conclusion by
22 saying -- I guess, if you take it, whether or not I don't
23 believe you are telling the truth, it's automatic it has to be
24 something else, and when there's no way to really decide that,
25 other than through some, perhaps, quantum leap of some kind.

1 So the Court is not going to grant that enhancement. I
2 don't think that this is a proper place for it in this
3 particular situation. And I'm not so sure it makes any
4 difference, really, because the issue as to the guidelines
5 being -- I guess would be moot in looking at what the levels
6 would pencil out to because of the enhancement for the
7 terrorism, an enhancement that I have granted, that would be a
8 level of 36, which carries an imprisonment range from 324
9 months to 405 months.

10 Well, obviously, the statute has trumped that, and so what
11 we are talking about now, it doesn't matter, but I guess
12 record of this thing, and looking at the guidelines, it's
13 always a matter of mathematics, and the Court is not called on
14 here to do that. The Court is called on here to look at the
15 crime that this defendant has been convicted of and determine
16 what is a fair and appropriate sentence. And that's the
17 bottom line, I guess the things that we do, to give it that
18 kind of understanding.

19 So, for the record, the Court is settling on the guideline
20 range as being a level 36, criminal history category of VI,
21 and a range of 324 to 405 months.

22 Now we get to the issue as to what should be the fair and
23 just sentence under the situation of this case. Looking at
24 all of what the Court has heard, all of the relevant conduct,
25 and that the Susanville matter is another, the due process

1 issue for the Court to take that and to make it, and in light
2 of the fact that nobody testified as to anything along that
3 line, for the Court to conclude that there was involvement in
4 that, and for the due process issue, the Court is not
5 considering that. The Court has before it this particular act
6 involving the University of Washington that it should
7 consider, in how it involved and how we talked about disparity
8 and a lot of sentences involving folks down in Oregon. But
9 there's also codefendants involved in this case that testified
10 in this case where there were plea agreements structured under
11 11(c)(1)(C) that would tell the Court a range, and this range,
12 what is based on substantial assistance and all of that, but
13 that is an element of this case for the Court to determine in
14 terms of punishment being meted out in those cases. If you
15 talk about it in terms of acts, I suppose under this case, one
16 act by -- and by that I mean the University of Washington, and
17 we have Ms. Kolar that pled to three counts of arson and one
18 attempt. And Ms. Phillabaum, in her plea of guilty, to one
19 count of arson and a count of destruction of property over
20 there in Eastern Washington.

21 So that would mean, seem to be the scenario of the ones
22 that are coming before this court.

23 The others, there's been testimony about what happened to
24 Mr. Rodgers and Mr. Solondz and others that no longer are
25 available for various reasons. And the Court has all of this

1 backdrop to determine the sentence. And I've read all of the
2 letters, and they are all over the place, like I mentioned.
3 They talk about some things that I wonder how they could have
4 knowledge of, but they do speak to what they have known from
5 Ms. Waters subsequent to the offense date on the charges
6 brought against her.

7 The jury heard all of that, and the jury made a decision
8 as to what to believe, what not to believe based on the
9 instructions given by the Court, and they found her guilty of
10 the two counts involving the bombing of the University of
11 Washington in terms of financial assistance and in terms of
12 interstate commerce.

13 And that's what the Court is here to try to determine, and
14 I've heard the recommendations from Mr. Bartlett saying that
15 it should be ten, and Mr. Fox saying it should be something, I
16 guess around a year, based on the Court's ability, in his
17 opinion, to suspend the mandatory minimum sentence.

18 Well, I think it's fair to say the Court is bound by,
19 because I don't find any support that would convince the Court
20 that it should suspend the mandatory minimum.

21 So what the sentence is looking at here is whether this
22 sentence should be ten or whether this sentence should be a
23 five-year sentence. I think that's the conclusion that we can
24 draw at this point.

25 The language, I've gone through these things, and

1 everybody, I guess, has been heard by in this matter. Ms.
2 Waters talks about "missing my daughter" and things that will
3 go undone because of what she's facing here. The University
4 of Washington is talking about what they have lost there, and
5 by account, if you look at all the replacement costs and all
6 of this, it's still around an amount that probation has been
7 recommending, it's right around six million dollars. That's
8 the loss of damage done by what this defendant has been
9 convicted of. And the Court can't lose sight of that.

10 So, the Court has considered this and wrestled with this
11 case for a long time and in a lot of respects in terms of
12 trying to fashion what I would consider a fair sentence based
13 on what's been submitted, and trying to do what Mr. Fox has
14 said, to make a fair and just sentence based on all of the
15 participation. Believe me, that is not the easiest job in the
16 world to go through and give credit for what they do.
17 Sometimes you wonder whether there is an answer in terms of
18 how you meet this definition of fair and just. How do you
19 really meet it without going through a lot of your own
20 experiences, trying to make sense out of no sense, and how you
21 do what you do because you hope to change something that you
22 probably won't change.

23 I don't know where all the insight will come from, but you
24 have to call on what you know in terms of making evaluation of
25 people, of the world, and all of that.

1 Sometimes it brings about understanding, but it doesn't
2 make an excuse for anything. So after you get through all of
3 that, you have to then say, your involvement, you stand
4 convicted, and any time you take any kind of action, there are
5 always consequences for it. So when you step out in that
6 direction, that's what you face.

7 I think that's what happened here, and I guess the rest of
8 it is up to the Ninth Circuit to determine whether or not the
9 ultimate issue was answered. As Mr. Fox said, they intend to
10 appeal, and maybe those are the folks that can sit there and
11 make a decision different than what was made here.

12 I know what I heard, and I know how the evidence went, and
13 to that extent this Court thinks a fair sentence in this
14 matter would be a period of six years. And that's what the
15 Court is going to set in terms of this defendant. This is the
16 sentence that you will have to serve. And the Court orders
17 restitution in the amount set forth in the presentence report,
18 and I see that this would be a figure that is justified under
19 the facts, as I understand about this case.

20 There will be a supervised release period of three years
21 following that sentence; that you will pay the special
22 assessment in the amount of \$200. No fine will be imposed
23 under the circumstances of this case.

24 Once you are released, you will be supervised by
25 probation, which means you are to not violate any of their

1 rules and regulations, nor any federal, state, or local laws.

2 You will cooperate in collection of DNA as directed by
3 probation.

4 You are not to have a firearm or any other destructive
5 device.

6 That you will submit to search of your person, your
7 vehicle, your residence, and that sort of thing, to make sure
8 you are in compliance.

9 I mentioned the restitution.

10 You are to provide probation with access to your financial
11 situation, which will show your assets and your federal income
12 tax return and give them the ability to make credit checks and
13 that sort of thing.

14 You are to maintain a single checking account in your own
15 name or with your husband, and work with them so they can
16 understand where your assets may be and where they may lie,
17 and have an account that would give them the right to do that
18 so they can make these kind of checks and make those kind of
19 determinations.

20 If you were to maintain any business enterprise of any
21 kind, you are to make available to probation the nature of
22 that, any documents that may go to that enterprise.

23 You are to expose all of your assets and liabilities to
24 probation and not transfer or waste, give away any property,
25 as there is an issue of restitution here that you are to

1 attempt to address.

2 If you have a personal computer of any kind -- I know
3 Mr. Fox has raised this question -- you are to open that for
4 inspection to make sure that it does not violate any
5 conditions as set down by the Court in terms of probation, and
6 to let them know what's going on there and software that may
7 be utilized in this matter, as you know this case involved the
8 use of computers and communiqués and that sort of thing, if it
9 involves the conduct here that we are talking about. You are
10 going to have to consent to them monitoring that. Upon
11 request, they can request, and you are to let them see that,
12 and they can retrieve what data may be there and that sort of
13 thing.

14 You are prohibited from incurring any major debt
15 obligation without approval of probation. And by that I don't
16 mean the necessities like food and shelter. But if you start
17 buying things out of the ordinary that are big ticket items,
18 so to speak, you are to notify them of your intent to do that,
19 and do that, of course, prior to any purchase of that kind.

20 You are to cooperate and furnish financial information, a
21 statement that may be required by the Internal Revenue
22 Service, taxes owing and due, if that become an issue in this
23 case.

24 You are to have no contact with the coconspirators of this
25 in Washington or in Oregon, members of this organization and

1 group that have been testified to, and you heard all the names
2 and places and things that came up during the course of trial.

3 As I indicated, you have no ability to pay a fine, and no
4 fine will be imposed.

5 A special assessment amount of \$200 will be imposed as to
6 count 5 and 7.

7 It's been mentioned about recommending where you will be
8 housed. I have no problem with the recommendation being made.
9 If Dublin is the place, that's fine. I expect that the Bureau
10 will take care of everything as to not have this in a way that
11 would be a conflict of some kind. I don't know the size of
12 this institution, whether two could coexist down there or
13 whatever the case may be. I don't know about that, until
14 there's a problem. But the recommendation will be made that
15 at least you should be housed at a place close to home where
16 you can have family and visit your daughter and that sort of
17 thing. So that's the intent of the recommendation, so you
18 have that right and you get the opportunity to do that.

19 Were there any other requests that I need to address at
20 this time?

21 MR. FOX: Your Honor, I had asked the Court to, since
22 the Court's not finding the Susanville incident, I would ask
23 that the Court, that those references to that incident be
24 deleted from the presentence report, or that --

25 THE COURT: I think it should be, because the Court

1 is not making a finding one way or another. So it won't be
2 confusing in any kind of way in the matter, I will ask
3 probation to take any reference to that out.

4 MR. FOX: The other proposal that I had was to remove
5 references to joining the family, the conspiracy, because
6 that's not what she was convicted of.

7 THE COURT: That's part of the relevant conduct that
8 we talked about. The Susanville bombing, I'm going to, from a
9 due process standpoint; not that.

10 MR. FOX: Okay. So Mr. Thomas will -- thank you.

11 The other issue, Your Honor, with regards to Dublin. I
12 had proposed an order that I filed the other day that sets out
13 the reasons, and under the statute, asking the BOP to explain
14 to the Court why they wouldn't honor that. I think statute
15 says if the BOP doesn't honor it, they should say --

16 THE COURT: I think they will tell me if they somehow
17 can't accommodate me on my recommendation, so I don't think I
18 need an order to that.

19 MR. FOX: Then we will just attach it to the
20 judgment, the -- the designation is going to be handwritten
21 in?

22 THE COURT: It will be in the judgment itself;
23 recommending that, if at all possible, that that's where she
24 will be housed.

25 MR. FOX: Okay.

1 THE COURT: Or at least in an alternative way, that
2 any facility close to her home would be considered, you know.
3 I don't know if Dublin or some other place may serve the
4 purpose, but I don't want to start running the Bureau of
5 Prisons. So they understand what I'm saying, and so I will
6 let them do their job.

7 MR. FOX: The final issue -- I don't know if the
8 Court wants to deal with this now, or deal with it in context
9 with our motion for an appeal bond, that Ms. Waters be allowed
10 to self-surrender.

11 THE COURT: I don't think that's an issue before the
12 Court today. I say it for this reason. Nothing has been done
13 that would change what came down from the Ninth Circuit.
14 Until something that would give some reason to change that, I
15 would say that it will stand as entered.

16 So unless something's come before the Court that would
17 cause this Court to revisit something in terms of new
18 evidence -- the only thing that has been raised by way of
19 letter or otherwise is that you mentioned about Ms. Kolar and
20 this file ending. Well, the Court hasn't disposed of any
21 issue there, so nothing has changed. Nothing that the Court
22 knows of has changed.

23 MR. FOX: May I address that and address the appeal
24 bond issue at the same time?

25 Your Honor, there's two issues. One is self-surrender and

1 the other is our motion that I filed for an appeal bond. I
2 understand what the Court just said, nothing's changed. I
3 believe, Your Honor, that there are a few circumstances which
4 have changed.

5 Under the government's calculations, Ms. Waters was
6 looking at --

7 THE COURT: What you are asking me now is probably to
8 do a detention hearing, and the Court's not -- there was no
9 detention hearing set for today.

10 MR. FOX: I filed a motion, a separate motion for
11 appeal bond.

12 THE COURT: I understand, but what would that be
13 based on if I have gone through a detention motion saying
14 that --

15 MR. FOX: Can I explain to the Court what I believe
16 the changes are?

17 THE COURT: All right.

18 MR. FOX: The Court has now imposed a sentence of six
19 years.

20 THE COURT: Right.

21 MR. FOX: The government before was saying the
22 maximum sentence was 40 years. That's what their memo said.
23 There's been a change of circumstances in that any motivation
24 to flee is a lot less given the Court's actual sentence as
25 opposed to what the government was saying Ms. Waters was

1 facing. So we believe there has been a change in
2 circumstances. Ms. Waters is now facing six years in prison,
3 not the 40 that the government -- I believe it was 20, but
4 they were saying it was 40.

5 Secondly, the 250 letters were not part of the record when
6 the case went up to the Ninth Circuit, and those do show
7 extensive community ties that speak to the fact that Ms.
8 Waters is not a flight risk. Those hadn't been submitted
9 before, and we are offering those in support of our motion
10 both for release pending self-surrender so she gets the
11 additional credits with the Bureau of Prisons for
12 self-surrender, and for release pending appeal.

13 Then with regards to the information about Ms. Kolar, it
14 is powerful evidence that will be the basis of a Rule 33, or
15 2255 petition. It changes substantially her position with
16 regards to the likelihood of success on appeal. I know the
17 Court hasn't ruled on it yet, but I'm sure the Court is
18 probably going to get briefing on it. But the fact is, is
19 that this is a material witness who admittedly was deceptive
20 in her testimony by a key piece of evidence. That evidence
21 was a key issue at trial, and we think that ultimately Ms.
22 Waters' chances for reversal on appeal are greater now.

23 So there are those three categories of changed
24 circumstances. So I'm asking that the Court release her
25 pending self-surrender, or to release her pending appeal for

1 those three reasons, in addition to everything else we argued
2 before.

3 THE COURT: I understand. All right.

4 Anything from the government on this matter?

5 MR. FRIEDMAN: If you would like me to, Your Honor.

6 Your Honor, as the Court knows, we have addressed the
7 issue of Ms. Waters' detention or release on bond at
8 tremendous length since her conviction. It was litigated
9 fully in front of Judge Arnold, it was litigated fully in
10 front of this court, and then briefed and litigated in front
11 of the Ninth Circuit.

12 The Ninth Circuit -- at each level Ms. Waters was ordered
13 detained, and the Ninth Circuit affirmed the findings below.

14 First off, there's two statutes that apply -- and the
15 Court's familiar with this, I know -- but 18 U.S.C. 3143, to
16 be eligible for detention. Now that Ms. Waters has been --
17 and released, to be eligible for release. Now that Ms. Waters
18 has been convicted of a crime of violence, she is not eligible
19 for release. The statute provides that she shall be detained.

20 So it's an even higher standard than applied before. It's
21 mandatory, and the Court is required to detain her under that
22 statute.

23 That takes us to 18 U.S.C. 3145(b), which allows for
24 release if she shows extraordinary circumstances.

25 When this started, the extraordinary circumstance was that

1 she's a mother of a young child and she was going to be
2 separated suddenly from the child. That argument was rejected
3 by both this Court and the Ninth Circuit, and by today we
4 actually heard Mr. Fox say that there is nothing extraordinary
5 about that, that's ordinary.

6 Now we have a different extraordinary circumstance, the
7 likelihood of success on appeal. This Court found that that
8 wasn't the basis, that there was no likelihood of success on
9 appeal. The Ninth Circuit affirmed that finding. The new
10 piece of information to which Mr. Fox refers is a minor point.
11 There's no evidence that Ms. Kolar was deceptive to this
12 Court. There's been no showing of a likelihood of success on
13 appeal on that, and so Ms. Waters should remain detained.

14 If it were truly important, I expect -- when it first came
15 up, the Court will remember that the defense said dramatic new
16 development; we need to continue sentencing. After about a
17 week to think about it, they said, no, let's go ahead with
18 sentencing; we will deal with that somewhere down the line. I
19 think that tells you how important it is and how likely there
20 is to be a reversal on appeal based on that.

21 THE COURT: Well, I think the issue here is not for
22 the Court to take up today. Now, you have the right to file
23 your motion.

24 MR. FOX: I do, Your Honor.

25 THE COURT: I understand, but the motion is not set

1 for the Court today because obviously we talked about
2 something that I was going to take up. You are telling me the
3 way, what that means.

4 At this point in time, just from what you say, it's a
5 critical piece, and it may tend to tell the Ninth Circuit that
6 they are going to reverse on it. I don't necessarily come to
7 that conclusion, but I haven't heard from everybody on that
8 and how to look at that. She wasn't the only person that
9 testified. So it was only a piece of evidence utilized in the
10 case. So the Court has to considered all of that.

11 So what I'm saying, the Court is not going to get into
12 that today because that wasn't set on the docket to be visited
13 because I want -- it's not briefed. I may even want
14 testimony; I don't know. I don't know exactly what you have
15 to present other than the way that it was written to me in
16 letter form. I know it's been filed, but it wasn't filed and
17 set on the docket to be heard today.

18 MR. FOX: I guess I'm asking the Court, rather than
19 having a separate hearing, I'm asking the Court to make a
20 ruling today.

21 THE COURT: I will stand by the ruling I already
22 made, and what the Ninth Circuit already made. It's denied.
23 And then it could be reopened, but you need to get me
24 something to show me, for the Court to decide whether
25 something like that will change my view in terms of an entry

1 they got as to whether or not something new has come into the
2 case. The letters don't really add that element that you're
3 talking about from what the statute has required. The letters
4 don't do that. They help me to determine what the appropriate
5 sentence should be, but not the issue that you're raising.
6 That's totally a legal issue.

7 All right. So if there's a judgment to that extent, I
8 will sign it.

9 MR. FOX: Let me just review it, Your Honor.

10 MR. BARTLETT: I have provided it to Mr. Fox to
11 review, Your Honor.

12 MR. FOX: Your Honor, I will pass forward the
13 judgment.

14 THE COURT: Mr. Fox, are you satisfied now that the
15 judgment being presented comports with the Court's order?

16 MR. FOX: It does, Your Honor.

17 THE COURT: With that understanding, this is the
18 judgment that I'm signing.

19 Ms. Waters, this means this is the sentence that you will
20 be under. But if you feel for any reason I have imposed an
21 illegal or unconstitutional sentence upon you, you have a
22 right to appeal this judgment. And since I am signing it here
23 today, if you intend to do that, you need to do it within ten
24 days of today's date. And that's --

25 THE CLERK: June 19th.

1 THE COURT: Okay, within ten days of today's date,
2 June 19.

3 Anything else?

4 MR. BARTLETT: No, Your Honor.

5 THE COURT: This will be the judgment.
6 Court is at recess.

7 (Recessed at 11:45 a.m.)
8
9

10 C E R T I F I C A T E

11 I certify that the foregoing is a correct transcript from
12 the record of proceedings in the above-entitled matter.
13
14

15 /s/ Julaine V. Ryen
16 JULAINE V. RYEN

June 25, 2008
Date

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